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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

CARL JOSEPH COCOMERO,

Defendant and Appellant.

A124740

(Mendocino County Super.
Ct. No. SCUK-CRCR-09-89424-02)

Defendant Carl J. Cocomero, as part of a negotiated disposition, pleaded guilty to Count Two of a criminal complaint. The charge he pleaded guilty to was a felony violation of Penal Code section 496, subdivision (a) (receiving stolen property). The remaining charges were dismissed. His attorney has filed a brief raising no issues and asks this court to conduct an independent review of the record to identify any issues that could result in reversal or modification of the judgment if resolved in defendant's favor. (*People v. Kelly* (2006) 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436; see *Smith v. Robbins* (2000) 528 U.S. 259.) Counsel declares she notified the defendant that he could file a supplemental brief raising any issue he wishes to call to this court's attention. No supplemental brief has been received.

Upon independent review of the record, we conclude no arguable issues are presented for review and affirm.

I. FACTS

On February 21, 2009, at approximately 3:00 a.m., members of the Mendocino County Sheriff's Office were sent to 410 Milani Drive, Ukiah concerning a possible vehicle theft. Upon arrival, the deputies met Mr. and Mrs. Phillips, victims in this case.

Mrs. Phillips related that at approximately 2:45 a.m., they were alerted to their dogs barking at something outside their residence. Once outside, she noticed the interior dome light of their truck was on. Also, each window was rolled down. Mr. Phillips advised that the interior light operates on a timer and remains on for approximately 30 seconds after the door is closed. Several items were determined to be missing, including currency, coin and binoculars.

The deputies searched the area near the residence of the Phillipses. They saw two men, one later identified as the defendant Carl Cocomero. As the officers approached the two men, Cocomero took off, running away from the deputies. After a brief chase, Cocomero was detained. A search of his backpack turned up considerable coin (\$15), some cash and three pair of binoculars, along with a camera. Mr. Phillips identified two pair of the binoculars found as being items he had in his truck before the theft.

Another member of the sheriff's office reviewed the camera found in Cocomero's backpack. He noticed that some of the photos resembled a friend, George Slack. The deputy contacted Mr. Slack about the camera. Slack indicated his truck had been entered on February 20, 2009, and a camera and binoculars were taken without permission. Slack identified the camera and binoculars found in Cocomero's backpack as the property taken from Slack's truck.

On February 24, 2009, the district attorney filed a complaint alleging one felony count for violation of Vehicle Code section 10851 (Count One); a misdemeanor count of receiving stolen property, a violation of Penal Code section 496, subdivision (a) (Count Two); and one misdemeanor count of resisting arrest, a violation of Penal Code section 148 (Count Three). Counsel was appointed to represent the defendant. On or about March 23, 2009, the defendant entered a plea of guilty to Count Two of the complaint, which was amended to allege a felony instead of a misdemeanor. It was an open plea,

with the remaining charges dismissed. Sentencing on Count Two was scheduled for April 27, 2009, and a report was ordered to be prepared by the Probation Department.

In taking the plea of guilty, the court advised Cocomero of his *Boykin-Tahl*¹ rights as well as his right to have a preliminary examination.

At the sentencing on April 27, 2009, the trial court imposed the aggravated term of three (3) years in state prison. The court indicated that Cocomero was on parole at the time of this arrest, and had at least one prior state prison commitment as well as numerous theft convictions in the past. The court also imposed a \$600 restitution fine pursuant to Penal Code section 1202.4, subdivision (b), but reserved any payment of restitution in addition to the fine.

The defendant filed a timely notice of appeal.

II. ANALYSIS

By entering a plea of guilty, defendant admitted the sufficiency of the evidence establishing his crime, and is not entitled to review any issue that goes to the question of guilt. (*People v. Hunter* (2002) 100 Cal.App.4th 37, 42.) Without a certificate of probable cause, defendant cannot contest the validity of his plea. Therefore the only issues cognizable on appeal are issues relating to the denial of a motion to suppress or issues relating to matters arising after the plea was entered. (Pen. Code, § 1237.5; Cal. Rules of Court, rule 8.304(b)(4).)

Upon our independent review of the record we find no meritorious issues that require further briefing on appeal. Defendant was fully advised of his *Boykin-Tahl* rights, including the acknowledgement that the plea was open and the court could impose the aggravated term of three years. He also was competently represented by appointed counsel at all times. It was within the trial court's discretion to deny probation in light of the criminal history of the defendant, including the fact he was on parole at the time of the offense. (Cal. Rules of Court, rule 4.414(b)(1), (2) & (4).) The probation report evaluated the case and record of defendant and recommended the aggravated term. Since

¹ *Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122.

this was an open plea, with other counts dismissed, the terms were consistent with the colloquy between the defendant and the court.

III. CONCLUSION

The judgment is affirmed.

Dondero, J.

We concur:

Margulies, Acting P. J.

Banke, J.